

Here, the Court lacks personal jurisdiction over Defendants at the threshold because they have not been made parties to this lawsuit.¹ *See Omni Capital Int'l v. Rudolph Wolff & Co.*, 484 U.S. 97, 104 (1987) (“Before a . . . court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”). As a result, Defendants cannot be required to take the requisite actions set forth in the Scheduling Order. *Murphy Bros.*, 526 U.S. at 350 (noting that “one becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.”). Defendants accordingly respectfully object to the Scheduling Order and request that the Court vacate the deadlines set forth therein.

**The Court Should Enter a Deadline
for Plaintiff to Serve Defendants**

Defendants attempted on numerous occasions to confer with Plaintiff regarding its failure to serve Defendants and the submission of a joint discovery/case management plan, but Plaintiff failed to respond. Dkt. No. 16. Defendants accordingly filed their own proposed discovery/case management plan² requesting that the Court order Plaintiff to serve Defendants (or follow the requirements of Rule 4(d) for waiver of service) by a date certain so that the requisite discovery and other deadlines can be triggered. *Id.* at pp. 4, 6.

Defendants renew this request. Specifically, Defendants respectfully ask the Court to require—as it has done before—Plaintiff to serve Defendants (or request waiver of service) within sixty days from entry of the Court’s order. *See Advanced Nano Coatings, Inc. v. Hanafin*, No. H-

¹ As previously noted, this Court also lacks personal jurisdiction over each foreign Defendant. Dkt. Nos. 9, 14, and 16. However, Defendants cannot properly move to dismiss before Plaintiff has even attempted service on them.

² Plaintiff failed to submit any proposed discovery/case management plan.

09-1243, 2009 U.S. Dist. LEXIS 134061, at *8-9 (S.D. Tex. Aug. 10, 2009) (J. Hoyt) (order entered allowing plaintiffs sixty days to effect service upon foreign defendants).

Defendants are prepared to defend against Plaintiff's meritless lawsuit. If and when Rule 4 has been satisfied, Defendants will expeditiously move for dismissal of Plaintiff's claims on grounds including but not limited to lack of personal jurisdiction, application of a binding forum selection clause, and Plaintiff's failure to state a claim. But Defendants cannot move this matter towards resolution if Plaintiff does not take the necessary procedural steps to prosecute its claims. And it appears that Plaintiff remains unwilling to take these actions absent a clear directive from the Court.

Conclusion and Prayer

For the reasons set forth above and in Defendants' Proposed Discovery/Case Management Plan [Dkt. No. 16], Defendants respectfully object to the deadlines set forth in the Scheduling Order and request that the Court (1) vacate the Scheduling Order, and (2) require Plaintiff to affect service pursuant to Rule 4 of the Federal Rules of Civil Procedure within sixty days from entry of the Court's order. Defendants further request that the Court grant Defendants any other relief to which they are entitled at law or in equity.

Respectfully submitted,

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**ATTORNEYS FOR SHOPIFY INC., SHOPIFY
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.

/s/ Eric Chenoweth
Eric Chenoweth